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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/823,045	03/30/2001	Herve Buzot	PPC-783	8980
27777	7590	01/02/2004	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			SALVATORE, LYNDIA	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 01/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/823,045

Applicant(s)

BUZOT, HERVE

Examiner

Lynda M Salvatore

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 and 21-29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-20 and 24 is/are allowed.
- 6) ☒ Claim(s) 1-17, 21-23, and 25-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☒ Interview Summary (PTO-413) Paper No(s). Same
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendment and accompanying remarks filed 09/03/03 have been carefully considered and entered. Claim 24 has been amended as requested. Applicant's amendment to claim 24 is found sufficient to overcome the 35 U.S.C. 112, second paragraph rejection set forth in section 4 of the last Office Action. As such, this rejection is withdrawn. With regard to the 35 U.S.C. 102 (b) rejections of claims 1-3,5,6,14-17,21-23 and 25-29, as being anticipated by Olsen, US 5,688,257, Applicant's arguments are not found persuasive of patentability for reasons set forth herein below.

Response to Arguments

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-3,5,6,14-23 and 25-29 stand rejected under 35 U.S.C. 102 (b) as being anticipated by Olsen, US 5,688,257 as set forth in section 6 of the last Office Action. Additionally, upon further consideration, the previously indicated allowability of claims 18-20 is withdrawn in view Olsen.

Applicant argues that the patent issued to Olsen fails to teach the limitations of claim 1. Specifically, the Applicant asserts that heat sealing the pervious upper portion material to form a tampon with an impervious film at the end of the tampon does not meet the limitation of a tampon comprising an over-wrap comprised of a "dissimilar" materials such that separate upper and lower portion are present. According to claim 1, said upper portion comprises a permeable material and said lower portion comprises an impermeable material. These arguments are not

found persuasive on the grounds that it is the position of the Examiner that the final product of Olsen comprises all of the features of the instantly claimed invention. The Examiner acknowledges that while the Olsen reference may not comprise the intermediate product comprising separate upper and lower over-wrap portions of dissimilar materials, said intermediate product is not given patentable weight since the final product structure of Olsen meets the chemical and structural "dissimilar" material limitations set forth in the instant invention. To reiterate, it is within the scope of the Olsen invention to provide a final product structure with both a perforated upper portion and a fluid impervious lower portion, thus meeting the "dissimilar material" limitation.

With regard to claims 18-20, Olsen teaches heat-sealing the entire end surface, thus forming a small side-wall on each corner (Column 3, 1-5).

4. Claim 4 stands rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen, US 5,688,257 as applied to claim 3 above, and further in view of Koyo Co. Ltd, Derwent Japanese Abstract JP 07-070896A as set forth in section 8 of the last Office Action.

Applicant argues a lack of motivation to combine the reference of Olsen and Koyo Co. Ltd, since Olsen fails to teach or suggest the invention set forth in claim 1. Applicant further argues that Koyo's incorporation of a water dispersible binding agent into thermoplastic fibers is different from the use of water soluble binding agents with the absorbent fibers in order to allow the absorbent material to remain compressed. These arguments are not found persuasive on the grounds that the Examiner maintains the rejection of the above aforementioned claims over Olsen and Applicant is not claiming a water-soluble binding agent, which "allows the absorbent material to remain compressed". The Examiner cited Koyo Co. Ltd to evidence that soluble

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binding agents are known in the art for the purpose dispersing non-woven materials, which would be highly desirable in the field of disposable personal articles. Thus it is believed that the Examiner has established proper motivation to combine said references.

5. Claims 7-9 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen, US 5,688,257 as applied to claim 5 above, in view of Martens et al., WO 97/23248 as set forth in section 9 of the last Office Action.

Applicant argues a lack of motivation to combine the references of Olsen and Martens et al., since Olsen fails to teach or suggest the invention set forth in claim 1. This argument is not found persuasive on the grounds that Martens et al., specifically teaches improving the absorption capacity of absorbent articles with a mixture of non-limbed and multi-limbed regenerated cellulosic fibers. Based on the disclosed improved absorption capacity, the Examiner maintains that proper motivation exists to employ the fibers of Martens et al., in the invention Olsen.

6. Claims 10 and 11 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen, US 5,688,257, as applied to claims 1 and 2 above, and further in view of Balzar, US 5,827,256 as set forth in section 10 of the last Office Action.

Applicant argues a lack of motivation to combine the references of Olsen and Balzar, since Olsen fails to teach or suggest the invention set forth in claim 1. This argument is not found persuasive on the grounds that it is the position of the Examiner that since Balzar and Olsen are from the same fields of endeavor it is well within the scope of someone having ordinary skill in the art to select a known material on the basis of its suitability. As such, the Examiner maintains

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that it would have been obvious to employ the compressed absorbent pledget such as the one disclosed by Balzar in the catamenial device of Olsen.

7. Claims 12 and 13 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen, US 5,688,257 as applied to claim 1 above and further in view of Schaefer, US 3,815,601 as set forth in section 11 of the last Office Action.

Applicant argues a lack of motivation to combine the references of Olsen and Schaefer, since Olsen fails to teach or suggest the invention set forth in claim 1. This argument is not found persuasive on the grounds that it is the position of the Examiner that since Schaefer and Olsen are from the same fields of endeavor it is well within the scope of someone having ordinary skill in the art to select a known material on the basis of its suitability. As such, the Examiner maintains that it would have been obvious to distribute ancillary absorbent materials such as pellets, rods, and bars as taught by Schaefer in the absorbent filling material of Olsen.

Claim Rejections - 35 USC § 103

8. Claims 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Olsen, US 5,688,257 as applied to claim 16 above and further in view of Olevsky, US 4,374,522.

Although, Olsen teaches heat-sealing the entire end surface of the pervious material, which would form small side-walls on each corner, Olevsky teaches an absorbent tampon comprising a fluid impervious layer extending up to form a shoulder. Olevsky discloses that such a configuration provides superior barrier to leakage (Column 2, 30-35). Therefore, motivated by the superior barrier leakage properties, it would have been obvious to one having ordinary skill in the art at the time the invention was made to also heat seal the sides of the pervious over-wrap in the Olsen tampon as taught by Olevsky.

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Allowable Subject Matter

9. As set forth in section 12 of the last Office Action, 24 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. With regard to claim 24, the prior art of record fails to teach an absorbent device comprising a strengthening ring wherein said ring is capable of opening said lower portion. An updated art search produced no new substantial art for which to base a rejection and presently there is no motivation to combine references to form an obvious type rejection.

Conclusion


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M Salvatore whose telephone number is 703-305-4070. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

December 8, 2003

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TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700